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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition No.35890 of 2015

&

M.P.No. 1 of 2015

1. M/s.Tamilnadu Petroproducts Limited
Repd. by its Director Mr.M.Pazhaniandy Pillai,
Manali Express Highways,
Manali, Chennai-600 068. ... Petitioner

-Vs-

1. Additional Director General of Foreign Trade
Shastri Bhavan Annexe, 4th Floor,
26, Haddows Road, Chennai-600 006.
2. Deputy Director General of Foreign Trade
Shastri Bhavan Annexe, 4th Floor
26, Haddows Road, Chennai-600 006.
3. Assistant Director General of Foreign Trade
Shastri Bhavan Annexe, 4th Floor
26, Haddows Road, Chennai-600 006.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the 3rd Respondents culminating in the letter F.No.04/66/88/ 00004/AM12/5 dated 30.3.2015 read with the further communication in F.No.04/66/88/ 00004/AM12/316 by the 2nd Respondents dated 23.07.2015 and quash the same.

For Petitioner : Mr. M.S.Harsha Prabhu
for MR.S.Murugappan

For Respondents : Mr. K.Ramamoorthy
Central Government Standing Counsel





30.3.2015 was a pre-determined one, cancelling the license without Notice and imposing recovery and that too with 15% interest.

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7. However, the petitioner submitted his objections to the impugned communication dated 30.03.2015. But strangely, none of his objections were considered by the 1st respondent and following reply was given by the 2nd respondent on 23.07.2015. The impugned order of the 1st respondent is extracted hereunder:

From the shipping bill-wise statement of exports in the Annexure to ANF-3E, it was observed that you had exported 'Linear Alkyl Bense' falling under ITC (HS) code 38170019 and SHIS was granted for Rs.10271882.00. Also, it has been observed that though in the RcMC issued by FIEO it was mentioned that the export product fell under Chemical and Allied products, under the Chemical and Allied products sector specified in the Table attached to para 3.10.8 of HBP, the goods falling under ITC (HS) code 38170019 was not included and that this had resulted in incorrect duty credit of Rs.10271882.00 which is recoverable with interest.

You are therefore requested to repay the excess duty credit availed by you as above, along with interest of 15% from the date of issue of the duty credit scrip, at the earliest.

8. The reading of the above communication clearly shows that the 1st respondent has failed to absolutely exercise his duty failed to apply his mind. The 1st Respondent has acted as an obedient servant of the audit department. Even though he is a competent authority to pass orders, he acted as post office to communicate what ever decision taken by the audit team without independent application of mind. Therefore, for the non application of mind on the face of it, the impugned order is liable to be set aside and accordingly is set aside.

9. However, liberty is granted to the 1st respondent to issue a fresh show cause notice recording reasons and to give opportunity to the petitioner to submit explanations and also an opportunity of personal hearing before taking a decision.



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10. Accordingly, the writ petition is ordered with above directions. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sha/kpr

To

1. Additional Director General of Foreign Trade
Shastri Bhavan Annexe, 4th Floor,
26, Haddows Road, Chennai-600 006.
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Shastri Bhavan Annexe, 4th Floor
26, Haddows Road, Chennai-600 006.

+1cc to MR.S.Murugappan, Advocate, S.R.No.23185

+1cc to Mr.K.Ramanamoorthy, Advocate, S.R.No.22971

W.P.No.35890 of 2015 &
M.P.No. 1 of 2015

SS(CO)
CT 27/05/2022